

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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<b>UNITED STATES OF AMERICA</b>	:	<b>CRIMINAL ACTION</b>
	:	<b>NO. 08-541-03</b>
<b>v.</b>	:	
	:	<b>CIVIL ACTION</b>
<b>DOMINGO MERCADO</b>	:	<b>NO. 11-778</b>
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**ORDER**

**AND NOW**, this 15th day of June, 2012, upon consideration of the United States of America's Motion to Reconsider the Court's Order Granting Defendant's 2255 Petition (Document No. 171, filed May 14, 2012), Defendant's Memorandum of Law in Opposition to the Government's Motion to Reconsider the Court's Order Granting the Defendant's 2255 Petition (Document No. 172, filed May 29, 2012), and the Reply in Support of United States of America's Motion to Reconsider the Court's Order Granting Defendant's 2255 Petition (Document No. 173, filed May 30, 2012), for the reasons set forth in the Memorandum dated June 15, 2012, the United States of America's Motion to Reconsider the Court's Order Granting Defendant's 2255 Petition is **GRANTED IN PART AND DENIED IN PART**, as follows:

1. The United States of America's Motion to Reconsider the Court's Order Granting Defendant's 2255 Petition is **GRANTED** with respect to the government's request that the Court rule on its claim that the testimony at issue was admissible under Federal Rule of Evidence 801(d)(1)(C). The Court **RULES** that the testimony was not admissible under Federal Rule of Evidence 801(d)(1)(C); and

2. The United States of America's Motion to Reconsider the Court's Order

Granting Defendant's 2255 Petition is **DENIED** in all other respects.

**IT IS FURTHER ORDERED** that the government shall, within thirty days of the entry of this Order, **ADVISE** defendant and the Court whether it intends to **RETRY** defendant. Any date for a new trial will be set in consultation with attorneys for the parties.

**BY THE COURT:**

/s/ Hon. Jan E. DuBois

**JAN E. DUBOIS, J.**